MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 3, 2018/2019

PLE0042 – ENGLISH FOR LAW

(Foundation in Law)

30 MAY 2019
9.00 a.m. – 11.00 a.m.
(2 Hours)

INSTRUCTIONS TO STUDENT

1. This question paper consists of **EIGHT** pages only.
2. Answer **ALL** questions in **Sections A** and **B.**
3. Please write all your answers in the answer booklet provided.

SECTION A: READING AND VOCABULARY [30 MARKS]

PART 1A: CRITICAL READING (12 MARKS)

Read the passage below and answer all questions.

Innocence is Irrelevant

1 Shanta Sweatt, a 36-year-old cleaner, permitted her boyfriend to move in under the **proviso** that he would not take drugs in her apartment, but one night, he smoked marijuana in her apartment. Words were exchanged, and he left. The next morning, police officers came to search her apartment. They found marijuana, and Sweatt was worried that this would result in the police pinning the crime on her sons. She told the police officers that the drug belonged to her. Sweatt's case was assigned to a lawyer named Ember Eyster from the public defender's office after she failed to hire a private attorney. She was charged with a felony which carried a maximum of 12-year prison sentence. However, Eyster believed that Sweatt was innocent as she did not have a history of drug use, and the best path was to negotiate a plea bargain. The prosecutor reduced the charge from a felony to a misdemeanour and offered Sweatt a six-month suspended sentence. She then pleaded guilty to a crime she did not commit. Sweatt's case is just one of a host of plea bargains in the United States. On the surface, the defendant greatly benefits from a plea agreement; in actual fact, the result bears little or no resemblance to justice.

2 The right to trial lies at the heart of the American criminal justice system. Judges and juries weigh the facts and pronounce on guilt and innocence, but what is practised behind this is the overuse of the plea-bargaining system at the expense of jury trials. This happens in the age of the plea bargain, though access to a trial is enshrined in the United States Constitution. Plea bargains simply foreclose this possibility. Today, 94 per cent of convictions at the state level and 97 per cent of convictions at the federal level in the United States are the result of plea bargains. These astonishing statistics reveal a stark truth about the American trial system. Supreme Court Justice, Anthony Kennedy, acknowledged this reality in *Missouri v. Frye*, "Plea bargaining is not some adjunct to the criminal justice system, but it is almost the criminal justice system." Besides, in New York itself, almost all criminal arrests that end in convictions are the result of plea bargains.

3 When the Supreme Court gave its seal of approval to plea bargains in 1970, it did so on the understanding that they would not be used to press the innocent to admit guilt, but a series of miscarriages of justice suggest that, all too often, that is what happens. Untrammelled prosecutorial authority adds up to *a system that seems designed to mock trials* and be misused, causing a perversion of justice. With freedom, prosecutors can slash sentences or determine who goes to jail. Hence, there is a tendency for abuse of discretion. In one drug possession case, Darlene Eckles allowed her drug-dealing brother to operate in her house. Federal prosecutors offered to let her plead to a 10-year sentence, but she rejected it and is now serving a 20-year sentence. In another case, prosecutors offered to let Patricio Paladin plead in return for a 20-year sentence for cocaine distribution. He refused and is now serving a life sentence. Commenting on prosecutorial power in 2013, Neil Gorsuch, an appellate judge, said, "Prosecutors can simply choose their targets with impunity."

4 According to the Prison Policy Initiative, 630,000 people are in jail on any given day, and most would succumb to this powerful system. For these defendants,

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plea bargaining leaves lifetime repercussions. Criminal records may never be expunged, resulting in exclusion from voting, eviction from public housing or denial of job. All this suggests that defendants must carefully weigh the consequences of a guilty plea. Nevertheless, many of them would readily accept a plea bargain, giving no consideration to all important matters affecting them. For them, bail is not the means to secure freedom; thus, plea bargaining is a system that jeopardises this group of offenders. It has become the only way for them to escape incarceration even if the plea may change their lives for the worse. With a deal, they can get out of jail or be put on probation which subjects them to good behaviour. Besides bail, a trial weighs heavily on them because they can ill afford it; thus, accepting a guilty plea appeals to them although it means waiving their constitutional rights.

5 Obviously, the United States is experiencing a criminal justice crisis which can subvert justice. In response to the crime wave, legislators have added many acts to criminal codes. Taking a slightly significant proportion of offenders to trial would grind proceedings to a halt. Consequently, plea bargains occur in the courts of each of the country's more than 3,000 counties, making up a vast patchwork of systems that keep the criminal justice running smoothly. According to Issa Kohler-Hausmann, a law associate professor at Yale, the dependence on plea bargaining poses risks as it can become a deliberate strategy. Prosecutors can manage the mass of people living in neighbourhoods with high crime rates by simply processing them through the ritual, even if it is overly coercive and reinforces inequality towards ethnic minorities. Even so, these defendants' disadvantaged position plays no role in plea bargains as prosecutors pay little attention to assessing guilt in individual cases.

6 Critics suggest that plea bargaining must be denounced to restore respect for criminal justice. When few cases are tested in trials, unjust statutes go unchallenged, the ability to carry out investigations can atrophy, and specious arguments are not contended. They also argue that plea bargains are negotiated in hurried hallway conversations, and justice is dispensed at the pace of speed dating, with a veil of secrecy. Despite these glaring weaknesses, horse-trading between the prosecutor and the defendant is too useful to be abandoned, and overthrowing it is too theoretical. As a pragmatic approach, criminal courts must grapple with issues that prevent fairness in plea bargaining for defendants and ensure more accountability. Between 1975 and 1990, plea bargains were banned in Alaska, but they happened informally, and prosecutors still made implicit deals with defendants. This was not the only ambitious attempt to abrogate the practice. Another attempt to do without it was also doomed. The Texan city of El Paso banned plea bargaining in 1975, but the ban was eventually rescinded because the judges could not cope. Above all, though plea bargaining has risen to become the daily bread of every criminal court in the country, it must not be allowed to warp the criminal justice system.

Adapted from Yoffe, E. (September 2017). *Innocence is irrelevant.* Retrieved from https://www.theatlantic.com/magazine/archive/2017/09/innocence-is-irrelevant/534171/

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1. The author states, "On the surface, the defendant greatly benefits from a plea agreement; in actual fact, the result bears little or no resemblance to justice" (lines 14 – 15). Prove that this statement is true in Sweatt's case. (1 mark)

2. i. What is the "stark truth" (line 23) that is revealed about the American trial system? (1 mark)

   ii. Support your answer in 2.i. with two points of evidence. (1 mark)

3. Referring to the context in paragraph 3, explain the meaning of "a system that seems designed to mock trials" (lines 31 – 32). (1 mark)

4. Based on the examples of cases given in paragraph 3, elaborate on "abuse of discretion" in line 34. (1 mark)

5. i. What can be concluded from the following statements? (1 mark)

   All this suggests that defendants must carefully weigh the consequences of a guilty plea. Nevertheless, many of them would readily accept a plea bargain, giving no consideration to all important matters affecting them. (lines 45 – 47)

   ii. Substantiate your conclusion with two explanations. (1 mark)

6. i. What is the "criminal justice crisis" (line 54) faced by the United States? (1 mark)

   ii. Give two reasons to explain why the author claims that such crisis can destroy justice. (2 marks)

7. i. Based on the statement below, identify the author's attitude towards the little likelihood of abolishing plea bargaining. (1 mark)

   Despite these glaring weaknesses, horse-trading between the prosecutor and the defendant is too useful to be abandoned, and overthrowing it is too theoretical. (lines 71 – 72)

   ii. Provide two points to justify why the author holds such attitude in 7.i. (1 mark)

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PART 1B: VOCABULARY (5 MARKS)

Fill in the blank in each sentence below with a word from the paragraph stated in parenthesis. The word must best suit and express the meaning of the sentence.

Example:

0. **Under the lease agreement, the premises let can be used to store any goods or belongings of the lessee, but it contains a _____ that deters the lessee from keeping illegal goods.**
   Word: proviso (paragraph 1)

1. In many civil cases, when a lawsuit has been filed, the lawyers representing both the plaintiff and the defendant might initiate settlement negotiations, but these negotiations do not _____ the legal option of the plaintiff to continue with the lawsuit if the negotiations fail.
   Word:_____ (paragraph 2) (1 mark)

2. During emergency, ministers in the United Kingdom have the discretion to take any action they deem appropriate, and actions such as curfews, confiscation of property or deployment of the armed forces to quell disorder are among their _____ sweeping powers.
   Word:_____ (paragraph 3) (1 mark)

3. In litigation for child custody, reports of child abuse can be very important, but only a credible report is admissible as evidence, whereas an unfounded report is inadmissible and can be _____.
   Word:_____ (paragraph 4) (1 mark)

4. In some criminal justice systems, judges can sentence defendants to perform community service to repay society for having committed the offence, in addition to some other forms of punishment such as imprisonment, fine or _____.
   Word:_____ (paragraph 4) (1 mark)

5. The case was dimissed after the court decided that the claims raised by the plaintiff, who served legal papers on the defendant with an intent to intimidate for an unfair advantage, were_____ and groundless.
   Word:_____ (paragraph 6) (1 mark)

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PART 2: CRITICAL READING OF PERSUASIVE TEXT (13 MARKS)

Read the passage below and answer all questions.

The Fraught Area of International Child Abduction in Malaysia

1 Marriages between persons of different nationalities are on the rise in Malaysia, and when a marital union breaks down, cross-border custody disputes naturally ensue when one parent returns to his or her country of origin with the children of the marriage. Thus, there is a compelling need to explore options to cushion the impact of collapsed marriages and to have this matter resolved by capitalising on the support network of Hague Member States.

2 The Hague Convention on the Civil Aspects of International Child Abduction 1980 (the Hague Convention) provides a cross-border mechanism to ensure that children who have been forcibly uprooted by one parent and taken to another country are speedily returned to their country of habitual residence before they form an attachment in the new country, and the courts of the country of habitual residence will determine the merits of the custodial dispute. The aim is to avoid uncertainty and relitigating the issues of custody and access. This would benefit the left-behind parent who may lack the financial resources and requisite contacts to secure the return of the abducted children.

3 However, Malaysia has yet to accede to the Hague Convention. It may well be that Malaysia, a Muslim country, has held back from acceding to the Hague Convention on the misunderstanding that substantial changes to domestic law are involved for it to be effective. This was an explanation proffered by Judge Anselmo Reyes at the International Malaysia Law Conference 2016. Malaysia has a dual legal system for family law under which the civil courts govern non-Muslims, whereas Sharia courts govern Muslims.

4 In child abduction and custody cases, courts would normally consider the best interests or welfare of the child. The apex court in the case of *Mahabir Prasad* held that the merits of the matter would be considered based on the best interests of the child, and the existence of a foreign custody order would be one element to be considered. In this case, the father, who was a Malaysian citizen, married an Indian national, and they had two daughters. Upon the breakdown of the marriage, the mother returned to India, and the girls remained with their father in Malaysia based on a deed of separation. The mother later obtained orders for a divorce and custody of the children from the Mumbai court. The Federal Court held that it is the law of this country and the law of India that the welfare and interests of the children must be the paramount consideration in child custody adjudication. Consequently, although our courts must take into consideration the order of a foreign court of competent jurisdiction, we are not bound to give effect to it if it is not for the children's benefit. After lengthy and expensive litigation, the Federal Court ultimately decided in the mother's favour, using the "best interests of the child test."

5 In another case, *Herbert Thomas Small v Elizabeth Mary Small,* the issue involved child abduction. The husband, wife and child were all Australian citizens, and the husband removed the child from Australia and entered Malaysia without the wife's knowledge. The husband obtained interim custody orders from the Malaysian civil courts. In the meantime, the wife obtained custody and return orders from the Australian courts and applied to set aside the husband's Malaysian court orders. The Malaysian court ordered the return of the abducted child for three broad reasons:

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special consideration of the Australian court orders, the court of habitual residence and the welfare of the child.

6 The legal issue posed by Malaysia's dual legal system is illustrated by *Raja Bahrin's* case, which involved a Terengganu prince who abducted his two children via land and sea from Australia to Malaysia. At that time, Australia was a non-Hague state. The husband, a Malaysian citizen, and the wife, an Australian citizen, married under Islamic law. They had two children, and the family lived in Malaysia. Marital difficulties followed. The wife, who held a precarious immigration status in Malaysia, took the children for a holiday in Australia and obtained ex-parte orders for guardianship, custody and maintenance. The husband then applied and was granted orders for guardianship and custody of the children from the Malaysian Sharia courts. He also filed proceedings in the Australian court, and the parties and children were ordered to return to Malaysia and have the issue of custody determined by the Malaysian civil courts.

7 Nevertheless, in 1992, the father discovered that the wife, who remarried, had baptised the children and changed their Muslim names to her surname without his knowledge and consent. Unhappy with this incident, he abducted the children and returned to Malaysia. The father and children were Muslims, and under Islamic law, when the mother remarried, she would have been disqualified from having custody of the children. Since the mother did not return to Malaysia and was a non-Muslim, the Sharia courts were not conferred jurisdiction over her; neither could she file an application in the civil courts because the father and children were Muslims and governed by the Sharia courts. Hence, this remains an unresolved legal conundrum.

8 It would be pertinent to highlight other practical problems when a parent seeks the return of an abducted non-Muslim Malaysian child or when a parent applies to bring the child into Malaysia for a holiday. Regrettably, as a non-Hague country, Malaysia is often viewed with suspicion by Hague member countries, resulting in a general reluctance to order a return or holiday access, a problem exacerbated by the issue of unilateral conversions of children to Islam by the abducting spouse.

9 Sadly, because of the absence of local legislation to facilitate the prompt return of abducted children, many children suffer in silence, being trapped in the maelstrom of marital disputes and deprived of the emotional contact with the left-behind parent. Revisiting the issue is a pivotal move to be acknowledged by the Malaysian government. Since there is much to be gained from leveraging the international cooperation of Hague nations to combat parental child abduction, there can no longer be any hesitation about the importance of Malaysia being a Hague signatory.

Adapted from Goh,S.L . (n.d.). *The fraught area of international child abduction: the Malaysian perspective.* Retrieved from http://shooklin.com.my/wp-content/uploads/2016/12/The-fraught-area-of-international-child-abduction-the-Malaysian-perspective.pdf

1. State the author's viewpoint. (1 mark)

2. In about 250 words, identify four persuasive techniques used by the author in persuading readers to agree with his or her viewpoint. Give two examples for each of the persuasive techniques used. Based on these examples, elaborate on how each technique is used to persuade readers to agree with his or her viewpoint. (12 marks)

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SECTION B: GRAMMAR [20 MARKS]

PART 1: MODAL VERBS (10 MARKS)

Fill in each blank with a suitable modal verb.

The regulators of the United States say digital advertising practices at Facebook Inc. violate housing law, and they are reviewing whether advertisements placed by Twitter Inc. and Alphabet Inc's Google (1) _____ also discriminate against those seeking a place to live. On March 28, 2018, the United States Department of Housing and Urban Development (HUD) accused Facebook of enabling and encouraging bias based on race and religion, as well as sex, by restricting who (2) _____ see housing-related advertisements on its platforms and across the Internet. "HUD should now conduct an inquiry about the advertising systems for their sites and products as well," says Lucy Sharma, a civil rights expert.

"Facebook is discriminating against people based upon who they are and where they live," HUD Secretary, Ben Carson, says. "Using a computer to limit a person's housing choices (3) _____ not be condoned as it is just as discriminatory as slamming a door in someone's face." The social network allowed those who advertised housing to exclude people whom it classified as "non-American-born", "non-Christian" and "Hispanic".

"For many years, we have had policies in place that prohibit targeting advertisements on the basis of sensitive categories such as race, ethnicity, religion, disability, negative financial standing and other discriminatory categories," a Google spokesperson says. Meanwhile, a Twitter spokesperson states, "Our policies are designed to protect users and ensure advertisers use our platforms responsibly. Twitter disallows any form of discriminatory advertising. People using Twitter to advertise have no option. They (4) _____ agree to comply with the law and not use our services for illegal activities."

However, the government's lawsuit against Facebook came only after it had been working to address many of the issues raised. Last year, it started to eliminate advertising targeting options that (5) _____ be misused in some way by irresponsible users. Recently, Facebook reached agreements with the National Fair Housing Alliance, the American Civil Liberties Union and others with regard to the guidelines on how housing and credit advertisements (6) _____ be run on the platform. Facebook has made it clear that it (7) _____ no longer let advertisements for housing, jobs or credit be targeted to particular users by age, gender or zip codes. Companies that use the social network and its other platforms to run those advertisements will have to certify compliance with anti-discrimination laws.

"We are surprised by HUD's decision as we have been working with them to address their concerns and have taken significant steps to prevent advertisement discrimination," Facebook says in a statement. "We have been advised by our legal consultants that we (8) _____ work with the civil rights experts as well to resolve this issue."

In accordance with the legal procedure in the country, HUD's action (9) _____ be heard by an administrative law judge unless one of the parties to the lawsuit wants it moved to federal district court. If the judge rules that Facebook violated the Fair Housing Act, penalties will include fines and a ban on the advertisements in question. However, Facebook proclaims that even if HUD were to drop the legal action, it (10) _____ still commit itself to its current measures to prohibit advertisement discrimination.

Adapted from Peacock, L. (2018, March 29). *Facebook violated US Fair Housing Act with ad practice, HUD charges*. Retrieved from https://www.thestar.com.my/tech/tech-news/2019/03/29/facebook-violated-us-fair-housing-act-with-ad-practice-hud-charges/#BK0Z6yCRdQjgJ0w7.99

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PART 2: REPORTED SPEECH (10 MARKS)

Change each underlined direct speech to a reported statement.

Freezer malfunctions at two fertility clinics at the end of March 2018 led to the loss of thousands of embryos stored by people who had hopes of using them for future pregnancies. Dozens of lawsuits have since been filed. Parents and would-be parents spoke of the children they would never have, of the siblings their children would never know. On March 30, one of the couples brought a lawsuit against the University Hospital in Ohio which ran one of the clinics. Wendy and Rick Penniman asked the court to declare that embryos have legal standing as persons. (1) "How many embryos, which many regard as babies, are now at risk?" said Wendy Penniman on the *Today* show.

If the court rules in the Pennimans' favour, that decision will very well alter the practices of in-vitro fertilisation (IVF) clinics. These clinics routinely create extra embryos because not every embryo will result in a pregnancy. Glenn Cohen, a Harvard law professor, said, (2) "What will happen to these extra embryos from IVF if they are declared persons?" He continued, (3) "Do the embryos that do not result in a pregnancy die like a human?"

The Pennimans lost three embryos in the Ohio malfunction. Those embryos are referred to by the defendant, the hospital, as property. However, the Pennimans' attorney, Bruce Taubman, emphasised that the couple considered life to begin at conception. Taubman said, (4) "These embryos were not just property at the hospital, but they were patients." Taubman continued to state that the court should consider the embryos to be persons under the law so that the Pennimans could sue the hospital for wrongful death. (5) "If embryos are declared persons, the damages are much more severe as there is no cap on damages," he added.

"*Roe v. Wade* made it clear that an embryo or fetus is not a person under the protection of federal law. Since then, no judges have suggested otherwise," said Dov Fox, a law professor at the University of San Diego. Faced with the destruction of an embryo, some couples might feel that loss as the loss of a child. Giving his opinion to couples who experienced such loss, Fox said, (6) "Accept the reality that the law in the United States doesn't recognise the nuance for the words 'embryo' and 'person'. Nevertheless, that does not mean no action can be initiated at all. (7) Even if the fetus has no legal standing as a person, that does not mean that wrongful death claims cannot be filed on behalf of a fetus."

Another attorney, Tom Merriman, commented, "An embryo is unique, and it has value far greater than your other assets, but personhood adds a partisan dimension to the cases." He said, (8) "I hate to learn that these cases get politicised and transformed into some partisan debate on a hot-button issue." Commenting on the Pennimans' effort to seek the declaration, Lucinda Finley, a professor at the University of Buffalo School of Law, pointed out, (9) "Don't cling too tightly to the hope that embryos will be declared persons. In these cases, courts tend to stick to the laws and precedents already on the books. There's no guarantee that a frozen embryo becomes a fetus, and implantations can fail as well."

However, if embryos are considered persons, people looking to store embryos might face additional obligations. (10) "Are people obligated to care for the embryos stored and make sure they are never destroyed?" Khiara Bridges, a professor at the Boston University School of Law, said. "It becomes more burdensome. Now, you have to worry about ongoing financial and moral obligations towards embryos as living persons," she elaborated.

Adapted from Wetsman, N. (2018, April 13). *Will fertility clinic disaster redefine personhood?* Retrieved from https://www.thedailybeast.com/will-fertility-clinic-disaster-redefine-personhood?ref=scroll

End of Paper